

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
CHARLIE'S TRAILER SALES,)
Charles Hendricksen, Owner,)
Appellant,)
vs.)
OLYMPIC AIR POLLUTION)
CONTROL AUTHORITY,)
Respondent.)

PCHB No. 467

FINAL FINDINGS OF FACT,
CONCLUSION AND ORDER

THIS MATTER being an appeal of a \$100.00 civil penalty; having come on regularly for hearing before the Pollution Control Hearings Board on the 18th day of January, 1974, at Lacey, Washington; and appellant Charles Hendricksen appearing pro se and respondent Olympic Air Pollution Control Authority appearing through its attorney, Fred Gentry; and Board member present at the hearing being W. A. Gissberg; and the Board having considered the transcript, exhibits, records and files herein and arguments of the parties and having entered on the 4th day of February, 1974, its proposed Findings of Fact, Conclusion

1 of Law and Order; and the Board having served said proposed Findings,
2 Conclusion and Order upon all parties herein by certified mail, return
3 receipt requested and twenty days having elapsed from said service; and

4 The Board having received no exceptions to said proposed Findings,
5 Conclusion and Order; and the Board being fully advised in the premises;
6 now therefore,

7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
8 Findings of Fact, Conclusion of Law and Order, dated the 4th day of
9 February, 1974, and incorporated by this reference herein and attached
10 hereto as Exhibit A, are adopted and hereby entered as the Board's
11 Final Findings of Fact, Conclusion of Law and Order herein.

12 DONE at Lacey, Washington, this 2nd day of March, 1974.

13 POLLUTION CONTROL HEARINGS BOARD

14 Walt Woodward
15 WALT WOODWARD, Chairman

16 W. A. Gissberg
17 W. A. GISSBERG, Member

18 Mary Ellen McCaffree
19 MARY ELLEN McCAFFREE, Member

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26 FINAL FINDINGS OF FACT,
27 CONCLUSION OF LAW
AND ORDER

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Mr. Charles Hendricksen
Charlie's Trailer Sales
1220 Lake Park Drive
Tumwater, Washington 98502

Mr. Fred Gentry
Bean, Gentry and Rathbone
614 Capitol Center Bldg.
Olympia, Washington 98501

Olympic Air Pollution
Control Authority
120 East State Avenue
Olympia, Washington 98501

LARENE C. BARLIN
LARENE C. BARLIN
POLLUTION CONTROL HEARINGS BOARD

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POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
CHARLIE'S TRAILER SALES,
Charles Hendricksen, Owner,

Appellant,

vs.

OLYMPIC AIR POLLUTION
CONTROL AUTHORITY,

Respondent.

PCHB No. 467

FINDINGS OF FACT,
CONCLUSION AND ORDER

A formal hearing on the Notice of Appeal of "Charlie's Trailer Sales, Charles Hendricksen, Owner" was held on January 18, 1974, at Lacey, Washington before Board member W. A. Gissberg, presiding. Appellant, Charles Hendricksen, appeared pro se; respondent appeared by its attorney, Fred Gentry.

Having considered the transcript of the testimony, the exhibits, and argument of the parties, and being fully advised, the Board makes and enters the following

EXHIBIT A

FINDINGS OF FACT

I.

Charles Hendricksen is the president and majority stockholder of Charlie's Trailer Sales, a Washington corporation. He is also individually engaged in the construction business in Thurston County, Washington and individually owns forty acres of land situated at a distance of approximately one-half mile from the corporate enterprise which is engaged in the sales of mobile homes at Tumwater, Thurston County, Washington.

II.

Mr. Hendricksen, desiring to improve the real property owned by him in his individual capacity, employed at least one person to engage in land clearing activity for him preparatory to building on the property a manufacturing plant of some type.

III.

Having had served upon him in the past a Notice of Violation of respondent's Regulations, and thus being aware of them, Mr. Hendricksen instructed one Charles Wheeler to procure from respondent a permit to conduct a fire and thus burn the stumps and brush resulting from the land clearing operation. Mr. Hendricksen testified that Mr. Wheeler is an employee of the corporation and that said one sometimes performs work and is paid by Mr. Hendricksen in his individual capacity.

IV.

A burning permit was procured from respondent on August 30, 1973. (Respondent's Exhibit 4) That permit, on its face, shows that it was issued to "Charlie's Trailer Sales", that the location of the burning

FINDINGS OF FACT,
CONCLUSION AND ORDER

1 site is the property owned by Mr. Hendricksen and that the owner of
2 the property upon which the burn was to be conducted is Charlie's
3 Trailer Sales. The permit contains several conditions, the two of
4 which are pertinent to this appeal state as follows:

5 " . . . 4. No material containing asphalt, petroleum products,
6 paint, rubber products, plastic, or any substance which normally
7 emits dense smoke or obnoxious odors will be burned. . . .
8 8. Additional conditions specific to this particular permit
(a) one pile at a time, less than 10' in dia. (10) call OAPCA
prior to burning each day. . . ."

9 V.

10 On September 13, 1973 one of respondent's inspectors, responding
11 to a citizen complaint, observed an open fire burning in a trench ten
12 to twenty feet long on Hendricksen's property prior to 11:00 a.m. Not
13 only were four or five stumps burning, but also two rubber tires,
14 carpet scraps, carpet backing and scrap lumber. One of Hendricksen's
15 employees was engaged in the logging of timber and the operation of a
16 "cat" machine on the property at the time the fire was observed by the
17 respondent's inspector. The fire had been burning for "some time".
18 Respondent's inspector journeyed to the office of Charlie's Trailer
19 Sales, one-half mile distant, and talked to Mr. Hendricksen about the
20 fire. Mr. Hendricksen disclaimed any knowledge whatsoever concerning
21 the fire and denied that any of his "people" had started it and denied
22 that he had personally started it. However, Mr. Hendricksen admitted at
23 the hearing on his appeal that it was possible that the carpeting in
24 the fire came from Charlie's Trailer Sales and that he allows his
25 employees to burn stumps and trash consisting of boards and old lumber
26 which comes from his various building construction activities located

27 FINDINGS OF FACT,
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1 elsewhere in Thurston County.

2 VI.

3 Respondent issued its Notice of Violation No. 548 and its subsequent
4 Civil Penalty No. 9133 in the amount of \$100.00, citing a violation of
5 respondent's Regulation 1, Section 9.01(b) and (c). Those sections of
6 respondent's Regulation 1 make it unlawful for any person to cause or
7 allow any open fire except under certain circumstances and for the
8 purposes material to this case, except when conducted by a permit
9 issued by respondent. Respondent's Regulation 1 authorized the
10 imposition of conditions to the validity of the burning permit.

11 VII.

12 Respondent conditioned the validity of its burning permit on the
13 requirement that the appellant call respondent "prior to burning each
14 day". The purpose of that condition is to safeguard against fires
15 when weather conditions are such that no open fires should be allowed.
16 Neither Hendricksen nor Charlie's Trailer Sales, nor any other person
17 in their behalf contacted respondent prior to the burn on September 13,
18 1973. Had he done so he would have learned that respondent, because of
19 weather conditions that day, would allow no fire prior to 11:00 a.m.

20 VIII.

21 The Notice of Violation was issued to "Charlie's Trailer Sales",
22 the Notice of Assessment of Civil Penalty was issued to "Charlie's
23 Trailer Sales, Charles Hendricksen, Owner" and served upon Charlie
24 Hendricksen. Appellant's Notice of Appeal in this cause was executed
25 individually by Charles Hendricksen. No mention is made therein of the
26 corporate nature of Charlie's Trailer Sales, nor does any such

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1 corporation in the Notice of Appeal purport to be a party to these
2 proceedings.

3 IX.

4 Section 9.01(e) of respondent's Regulation 1 establishes a
5 presumption that the person who owns or controls property on which an
6 open fire prohibited by the regulation occurs has caused or allowed
7 said open fire.

8 X.

9 Appellant did not personally start the fire, nor did he even know
10 that it was burning on the day in question, nor did he expressly
11 authorize prohibited material to be burned in a fire which was permitted
12 by him. His employees, acting within the scope of their authority, did
13 start the fire and did place prohibited materials thereon.

14 From which comes the following

15 CONCLUSION OF LAW

16 Appellant, Charles Hendricksen, violated Section 9.01 of
17 respondent's Regulation 1. The enforcement action taken by respondent
18 against appellant is civil in nature. The legal rules of agency and
19 respondeat superior apply in this case. Accordingly, even though
20 appellant did not expressly direct nor even know of the action of his
21 employees, since they were acting in the scope of their employment
22 when they placed prohibitive burning materials in a fire which was
23 started by another one of appellant's employees, appellant himself
24 is deemed, under the law, to have taken such action.

25 From which comes the following

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27 FINDINGS OF FACT,
CONCLUSION AND ORDER

ORDER

The appeal is denied and the imposition of the civil penalty is affirmed.

DONE at Lacey, Washington this 4th day of February, 1974.

POLLUTION CONTROL HEARINGS BOARD

Walt Woodward
WALT WOODWARD, Chairman

W. A. Gissberg
W. A. GISSBERG, Member

Mary Ellen McCaffree
MARY ELLEN McCAFFREE, Member

FINDINGS OF FACT,
CONCLUSION AND ORDER